

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

NOV 05 2007

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA)	No. 06-50657
)	
Plaintiff-Appellee,)	D.C. No. CR-05-00345-BTM
)	
v.)	MEMORANDUM*
)	
JOSE BELTRAN-QUINONEZ,)	
)	
Defendant-Appellant.)	
_____)	

Appeal from the United States District Court
for the Southern District of California
Barry T. Moskowitz, District Judge, Presiding

Argued and Submitted October 16, 2007
Pasadena, California

Before: FERNANDEZ and WARDLAW, Circuit Judges, and COLLINS,**
District Judge.

Jose Ernesto Beltran-Quinonez appeals the 36-month sentence imposed upon him following his guilty plea to one count of conveying false information concerning the bringing of a nuclear warhead into the United States for use in

*This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

**The Honorable Raner C. Collins, United States District Judge for the District of Arizona, sitting by designation.

Boston, Massachusetts. See 18 U.S.C. § 1038(a)(1). He contends that although the district court properly calculated his base Guideline sentence pursuant to USSG § 2A6.1 (2005), it then improperly calculated a departure therefrom,¹ and also imposed an unreasonable sentence.² We affirm.

The district court carefully considered all of the evidence and the factors which must be applied in determining an ultimately reasonable sentence³ before it decided that 36 months was the proper sentence here. We cannot say that the district court abused its discretion. See Rita v. United States, ___ U.S. ___, 127 S. Ct. 2456, 2465, 168 L. Ed. 2d 203 (2007). Even were we to decide that the district court erred in calculating a departure within the meaning of the Guideline commentary,⁴ the district court's statements made it perfectly clear that any error was immaterial to the sentence it ultimately decided upon.⁵

AFFIRMED.

¹See USSG § 2A6.1, comment. (n.3(B)).

²See United States v. Booker, 543 U.S. 220, 261–62, 125 S. Ct. 738, 765–66, 160 L. Ed. 2d 621 (2005).

³See 18 U.S.C. § 3553(a).

⁴We need not decide the issue. Moreover, solely for purposes of this disposition, we assume, without deciding, that the making of that calculation is still appropriate and meaningful. But see United States v. Mohamed, 459 F.3d 979, 986–87 (9th Cir. 2006).

⁵See United States v. Cantrell, 433 F.3d 1269, 1279–81 (9th Cir. 2006).